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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,324	07/03/2003	Henry M. Hund JR.	0554300/2006	4056

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EXAMINER

FOX, CHARLES A

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/612,324

Applicant(s)

HUND ET AL.

Examiner

Charles A. Fox

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25-30 is/are allowed.
- 6) ☒ Claim(s) 18-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. in view of Riedl et al. Smith et al. US 5,547,332 teaches a refuse collection vehicle comprising:

- a frame;
- a collection bin (19) mounted on said frame;
- an apparatus (35) for lifting and dumping a container into said bin;
- a storage compartment (17) mounted to the rear of said bin;
- a gate at the rear of said storage compartment.

Smith et al. do not teach a collection compartment at the rear of the storage compartment. Riedl et al. US 3,204,789 teaches a refuse collection vehicle comprising :

- a collection compartment (3) pivotally attached to the rear of a refuse storage compartment;

- a packer blade (12) within the collection compartment;

means for moving the packer blade so as to move refuse into the storage compartment. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Smith et al. with a rear collection

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compartment as taught by Riedl et al. in order to allow the device to be loaded from both the side and the rear as needed by an operator.

Claims 19,21 are rejected under 35 U.S.C. 103(a) as being unpatentable over . Smith et al. in view of Riedl et al. as applied to claim 18 above, and further in view of Armstrong. Smith et al. in view of Riedl et al. teach the limitations of claim 18 as above Smith et al. further teach:

a container grab assembly (35) which includes a pair of opposed grabbing arms in a spaced relationship that are operable by a fluid operated actuating system to grab and release a container;

an articulated arm that is operable by a fluid operated actuator through a cycle that includes retracted, extended, lifting and dumping positions.

Smith et al. do not teach the lifting arm as having articulated joints with parallel links.

Armstrong US 3,952,890 teaches an articulated lifting arm comprising :

a base link (1);

an upper link (20) having a first and second end;

a reach link (7) having a first end pivotally attached to the base link, and a second end pivotally attached to the upper link;

a lift arm (5) having a first and second end, one of said end connected to a lifting device (3);

a system of hydraulic actuators (9,11,14) for movement of the articulated structure;

wherein during movement of said arm the base link and the upper link remain substantially parallel with each other;

It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the apparatus taught by Smith et al. in view of Riedl et al. with an articulated arm as taught by Armstrong in order to allow the device to pick up containers at close distances from the vehicle thereby allowing the vehicle to operate in areas with restricted spaces such as alleyways.

In regards to claim 21 Smith et al. and Armstrong both further teach using double acting hydraulic actuators to move their lifting arms.

Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al., Riedl et al. and Armstrong as applied to claim 19 above, and further in view of Pickrell. In regards to claims 22 and 23 Smith et al, Riedl et al. and Armstrong teach the limitations of claim 19 as above they do not teach a gear assembly being used on the gripping device. Pickrell US 5,026,104 teaches a gripping assembly for lifting a container for emptying, said gripper comprising:

- a side support arm (29), having a first and second end where said first end is attached to a lift arm;

- a gear box that is mounted on said second end of said support arm, said gear box including a left gear (38 and a right gear (35);

- a right shaft (33) on which right gear is mounted;

- a left shaft (34) on which left gear is mounted;

a drive link (40) with a first and a second end, where said first end is mounted on said right shaft;

a left grabbing arm (52) mounted on said left shaft;

a right grabbing arm mounted on said right shaft;

a grabber cylinder (43) having a base end and a rod end, one of said ends being mounted on the side support arm and the other being attached to said second end of said drive link;

wherein said relationship between said gears, drive link and grabber cylinder are such that retraction of the cylinder rod will move the grabbing arms from an open position to a grab position.

It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the apparatus taught by Smith et al, Riedl et al. and Armstrong with a grabber as taught by Pickrell in order to be able to pick up containers of various sizes and shapes without having to adjust the gripping mechanism to suit the container being picked up.

In regards to claim 24 it would have been obvious to one of ordinary skill in the art, at the time of invention to enclose the gears of the gripping mechanism of Smith et al. as modified by Pickrell as it is a well known expedient to place gears in a closed box with extending shafts to protect the gears from the elements as well as providing a means to easily lubricate the them.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. in view of Riedl et al. as applied to claim 18 above, and further in view of Moore et

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al. Smith et al. and Riedl et al. teach the limitations of claim 18 as above, they do not teach a front loading device on their device. Moore et al. US 5,861,580 teaches a refuse collection vehicle comprising :

- a frame;

- a collection bin (14) mounted on said frame;

- an apparatus (16) for emptying a container into said bin;

- a storage compartment mounted adjacent to said collection bin;

- wherein said apparatus for emptying containers comprises;

- a pair of lifting arms (20) with a first end pivotally connected to said frame and a fork (10) pivotally attached to a second end of said arms;

- said fork being adapted to engage sleeves (32) of a container (30) for lifting thereof;

- a first fluid-operated actuator (26) for pivoting said fork, and a second fluid-operated actuator (18) for pivoting said arm about its first end. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Smith et al. with the front loading abilities taught by Moore et al. in order to allow the device to pick up and empty both residential and commercial type containers thereby making the vehicle more versatile in the field.

Allowable Subject Matter

Claims 25-30 are allowed. Claim 25 has structural limitations dealing with the placement of the lift and reach cylinders that is not taught or suggested in the prior art of

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Smith et al. or Armstrong. Claims 26-30 which depend from claim 25 are also in condition for allowance at this time.

Response to Arguments

Applicant's arguments filed May 20, 2005 have been fully considered but they are not persuasive. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, modifying the Smith et al. reference by the teachings of Riedl yields a vehicle that is able to be adapted to a variety of situations that the Smith et al. reference could not be used in without the modifications. As such this is motivation to make the combination.

Regarding the combination of Smith et al., Riedl and Armstrong for the rejections of claims 19 and 21 the applicant is correct that Smith et al. does appear to be able to operate as the Armstrong reference teaches. However this is not taught by Smith et al, but is by Armstrong. As such there is motivation to make the combination rather than relying merely on the appearances of the Smith et al. reference.

Regarding the combination of Smith et al., Riedl ,Armstrong and Pickrell in the rejections of claims 22-24 the motivation is clearly taught in Pickrell for making the combination. The ability to pick up a variety of sized containers is well known in the art as a plus and as such one would look to gripping mechanisms as taught by Pickrell to achieve this advantage over systems that are more limited in the containers they may pick up.

In regards to the combination of Smith et al., Riedl and Moore et al. it is noted that claim 20 in and of itself changes the type of lifting arm in the instant application from a side loading arm to a front loading arm. Both types are well known in the art and the Moore et al. reference is used to teach a common loading system. The motivation to use it in combination with the Smith et al. and Riedl is to allow the device to pick up a larger variety of container, thereby expanding the usefulness of the vehicle.

Regarding Smith et al. teaching away from the instant invention based upon wheel base of the truck the examiner does not agree with the applicant analysis. The shortening of the wheel base is predicated by reducing the space between the collection compartment and the cab of the truck and not the weight of the collection compartment. As such changing the rear of the Smith et al. vehicle as taught by Riedl would not lead

to a change in the wheel base as the space between the collection compartment and the cab is not being changed. Secondly there is no way to tell if the rear section of Riedl's vehicle is heavier than that of Smith et al. other than speculation. As such it is a moot argument as it can not be proven or disproved by either the applicant or the examiner and there are no objective facts to support this line of argument.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached between 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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